

ERIC MURRAY

IBLA 79-533

Decided April 28, 1980

Appeal from decision California State Office, Bureau of Land Management, declaring placer mining claim, Gold Diggers Dream Mine, abandoned and void. CA MC 29759.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location

The owner of an unpatented mining claim, located after Oct. 21, 1976, must file within 90 days after the date of location in the proper BLM office a copy of the certificate of location of the claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location

The failure to file the instruments required by 43 CFR 3833.1 and 3833.2 within the time periods prescribed therein, constitutes an abandonment of the mining claim, and the claim is properly deemed to be void.

3. Regulations: Generally -- Statutes

All persons dealing with the government are presumed to have knowledge of duly promulgated statutes and regulations regardless of their actual knowledge of what is contained in such statutes and regulations.

APPEARANCES: Eric Murray, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Eric Murray located the placer mining claim, Gold Diggers Dream Mine, on February 9, 1979. California State Office, Bureau of Land Management (BLM), received his location notice for recordation on July 3, 1979. On July 10, 1979, BLM declared the placer mining claim, Gold Diggers Dream Mine, abandoned and void under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), 43 CFR 3833.1-2(b), and 43 CFR 3833.4(a).

[1, 2] The cited regulations provide:

43 CFR 3833.1-2(b).

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office) within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section. * * *

43 CFR 3833.4(a).

The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site or tunnel site and it shall be void.

The time between appellant's actual location date and the recordation with BLM is more than the 90 days allotted in the regulation. Thus BLM was correct to declare appellant's mining claim void. Jim Spicer, 42 IBLA 288 (1979), Phillip M. Gardiner, 41 IBLA 72 (1979). BLM further stated that appellant may, however, relocate his mining claim and refile the appropriate instruments within the time period prescribed by the regulation subject to valid intervening rights of third parties or the United States.

[3] Appellant in his statement of reasons on appeal indicated that he failed to file with BLM within the allotted 90-day period because he was unaware of the requirement to do so. The Board has held in many previous cases that all persons dealing with the government are presumed to have knowledge of duly promulgated statutes and

regulations, regardless of their actual knowledge. See Bernard B. Gencorelli, 43 IBLA 7 (1979); Fred S. Ghelarducci, 41 IBLA 277 (1979).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

